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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/589.117	01/19/96	BROWN	C 12740-00002

C2M1/0617  
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EXAMINER	
WEAVER, S	
ART UNIT	PAPER NUMBER
3207	

DATE MAILED: 06/17/97

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.

08/589,117

Applicant(s)

BROWN ET AL

Examiner

SUE A. WEAVER

Group Art Unit

3207



☒ Responsive to communication(s) filed on Mar 3, 1997

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 13-21 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☒ Claim(s) 13, 16, 17, and 20 is/are allowed.

☒ Claim(s) 14, 15, 18, 19, and 21 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☒ The proposed drawing correction, filed on Mar 3, 1997 is ☒ approved ☐ disapproved.

☒ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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1. The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on 3/3/97 have been approved.
2. The Abstract of the Disclosure is objected to because the amendment could not be entered, as instructed. There is no "opening, the" on line 15. Furthermore, if entered after "opening, the" on line 12, the expression would read "...a vent tube having a distal end having an opening, the container projecting downwardly into the upper portion of the vent tube,...", which of course it doesn't. It isn't clear what type of change applicants intended to make to correct the abstract. Therefore, the objection remains. Correction is required. See M.P.E.P. § 608.01(b).
3. The objections to the title made in the first paragraph and the disclosure made in the fourth paragraph of the previous Office action, Paper No. 3, are withdrawn in view of applicants' amendment received 3/3/97.
4. Claims 14, 15, 18, 19 and 21 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 14 is considered to be inaccurate, as amended, because if the airway extends to a point in the reservoir tube above the level of the liquid, as claimed in claim 13, then the

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vent tube which also projects into the reservoir so that its distal end is above the level of the liquid, must comprise part of the airway, not just be in communication with it, as is now claimed in claim 14. Applicants do not disclose two features which extend down into the reservoir tube to above the level of liquid. The same situation applies to claims 19 and 21, as amended.

Claim 15, as amended, simply doesn't make sense. The vent unit cannot be adjacent the reservoir tube, when the reservoir tube is a component of the vent unit.

5. The terminal disclaimer filed on 3/3/97 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of U.S. Patent No. 5,570,796 has been reviewed and is accepted. The terminal disclaimer has been recorded.

6. The obviousness type double patenting rejection of claims 13-21 made in paragraph 10 of the previous Office action has been obviated by applicants' terminal disclaimer received 3/3/97.

Moreover, the rejection of claims 13, 16 and 17 under 35 USC 112, second paragraph, made in paragraph 5 of the previous Office action is withdrawn in view of applicants' amendment received 3/3/97. The rejection of claims 19 and 21 under 35

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USC 102(b) made in paragraph 7 of the previous Office action is also withdrawn in view of applicants' amendment.

7. Claims 13, 16, 17 and 20 appear to be allowable over the prior art of record.

8. Claims 14, 15, 18, 19 and 21 would be allowable if rewritten or amended to overcome the rejection under 35 U.S.C. 112.

9. Applicant's arguments with respect to claims 14, 15, 18, 19 and 21 have been considered but are deemed to be moot in view of the new grounds of rejection.

Therefore, claims 14, 15, 18, 19 and 21 have been rejected while claims 13, 16, 17 and 20 have been allowed and claims 1-12 canceled.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sue A Weaver whose telephone number is (703) 308-1186 on Tuesday-Friday. The Group Fax is (703) 3053579.

*Sue A Weaver*

**SUE A. WEAVER  
PRIMARY EXAMINER  
GROUP 3200**

SW  
June 10, 1997